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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,263	11/21/2003	Edward Paul Carlin	9435	2795
27752 7590 09/14/2007 THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION - WEST BLDG. WINTON HILL BUSINESS CENTER - BOX 412 6250 CENTER HILL AVENUE CINCINNATI, OH 45224			EXAMINER CHAPMAN, GINGER T	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 09/14/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/719,263

Applicant(s)

CARLIN, EDWARD PAUL

Examiner

Ginger T. Chapman

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2007.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 7-12 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-4 and 7-12 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 16 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of the claims

Claims 1-4 and 7-12 are pending in the application.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 7-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Schoelling (US 2002/0151859 A1).

With regard to claim 1, Schoelling ('859) discloses a tampon (30) for feminine hygiene comprising an insertion end, a withdrawal end, a center region, a longitudinal axis and an outer surface (fig. 1), the tampon being comprised of compressed fibrous material [0009, 0031]; the outer surface (30) of the tampon comprises a plurality of recessed portions (42); each of recessed portions comprising a length dimension and a width dimension wherein the width dimension varies intermittently as measured along the length dimension (figs. 3, 4 (50, 42, 40); and all of the outer surface of the tampon is liquid-absorbing [0083].

With regard to the limitation of the width dimension of the recessed portion varying intermittently as measured along the length dimension, Schoelling discloses that the recessed portions comprise guide ducts (50) best depicted in Figure 3, which open up into grooves (42) best depicted in Figure 2. The guide ducts are drop-shaped as disclosed at [0038] and depicted in Figure 3. Each guide duct (50) and its associated groove (42) comprise a recessed portion that

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extends along the length dimension of the tampon. Each duct (50) and groove (42) is one recessed portion because Schoelling discloses that each groove (42) forms a drop-shaped duct (50) and each groove is in fluid communication with its drop-shaped ducts because the duct conveys the body fluid from the open duct and into the groove and along the groove and to the core. Additionally, the ducts and grooves bring about an expansion of the liquid-absorbent outer surface of the tampon, and the expansion of the outer surface increases the variance of the widths of the ducts and grooves. The expansion of the outer surface of the tampon will increase the variance of the widths of the ducts and grooves because tampons are known to have irregular expansion of their surface area in use conditions within the vaginal vault because the flow of fluid is irregular along the vaginal walls and therefore irregular along the surface of the tampon, therefore the tampon surface will undergo irregular expansion thus further increasing the variance of the widths of the recessed portions. Therefore Schoelling discloses the width dimension varies intermittently along the length dimension and thus fulfills the claim limitations.

With regard to claim 7, Schoelling ('859) discloses in Figures 3 and 4 the recessed portions are evenly spaced.

With regard to claim 8, Schoelling discloses the fibrous material of the tampon has an essentially uniform density over a cross-section of the tampon [0009].

With regard to claims 9 and 10, Schoelling discloses at [0009] the fibrous material of the tampon comprises a core which is highly compressed as recited in claim 10 and thus will have varying density over a cross-section of the tampon as recited in claim 9.

With regard to claim 11, Schoelling discloses the withdrawal end (34) comprises a withdrawal member (35).

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With regard to claim 12, Schoelling discloses the withdrawal end further comprises a finger indent (48).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schoelling (US 2002/0151859 A1) in view of Kollwitz et al (US 2003/0176845 A1).

With regard to claims 2-4, Schoelling discloses the invention substantially as claimed except for the largest width dimension is located in the insertion end. Schoelling at [0038] expresses the desire for a tampon that can be comfortably inserted into the body cavity of the user. Kollwitz et al, at [0002] expresses the desire and motivation for a tampon that can be comfortably inserted by the user and have enhanced absorption capabilities. As seen in Figure 1, Kollwitz teaches a tampon (20) where the largest width dimension is located in the insertion end (24) as recited in claim 2, and wherein the largest width dimension is located in the withdrawal end (30) as recited in claim 3, and the smallest width dimension is located in the center region (32) as recited in claim 4. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the tampon of Schoelling having the claimed width dimensions as taught by Kollwitz since Kollwitz states at [0002] that the advantage of forming the tampon with this design is that it renders the tampon easy to insert and enhances the fluid acquisition capabilities of the tampon.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4 and 7-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No. 10/719,793. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims describe the substantially identical article.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-4 and 7-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 and 18-20 of copending Application No. 10/719,786. Although the conflicting claims are not identical, they

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are not patentably distinct from each other because the surface aberrations of '786 are the instant recessed portions.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-4 and 7-12 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 7,214,218 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims contain a broader recitation of the issued claims. Additionally the examiner notes the only difference between the '218 claim 1 and the instant claim 1 is that the '218 claim incorporates the structural limitations as disclosed in the instant Specification from p. 6, l. 17 to p. 7, line 15.

Response to Arguments

Applicant's arguments filed 2 July 2007 have been fully considered but they are not persuasive. Applicants argue that they can find no support in the Specification of Schoelling for the prior art tampon having a recessed portion wherein the width of the recessed portion varies intermittently along the length dimension of the tampon because Applicant has interpreted the drop-shaped ducts and grooves as having a constant width dimension.

This argument is not persuasive because, as detailed *supra* under claim 1, each drop-shaped-duct and its associated groove form a recessed portion because they form one continuous recessed portion that extends along the length dimension from the insertion end to the withdrawal end of the liquid-absorbent surface of the tampon, as disclosed by Schoelling at

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[0038]. First, the drop-shaped duct itself has a width dimension that varies because a drop-shape by definition varies along its width dimension. Second, the width dimension of the duct varies from the width dimension of the groove because the duct is wider than the groove, therefore the width dimension of the recessed portion varies from the beginning of the recessed portion, the drop-shaped duct that conveys fluid into the groove and is in fluid communication with the groove, to the end of the recessed portion, the end opposite the drop-shape, thereby making the recessed portion of Schoelling a long continuous recessed portion of varying width as it extends from the insertion end to the withdrawal end of the tampon, i.e. the length dimension. Therefore Schoelling discloses the width dimension of the recessed portion varies intermittently along the length dimension and thus fulfills the claim limitations. See claim 1 *supra*.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lamb (US 2004/0199137 A1, equivalent to PCT/IB02/02815): Figures 3, 4 and 11, surface formations (38, 40, 30).

Rabell (US 2,499,414) Figure 10 (40, 50).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 9:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ginger Chapman
Examiner, Art Unit 3761
09/07/07



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

